

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

JANESSA BOINTY,

Plaintiff,

v.

**STATE OF OKLAHOMA ex rel.
OKLAHOMA STATE DEPARTMENT
OF EDUCATION,**

and

**RYAN WALTERS, in his official
capacity as Superintendent of Public
Instruction, and in his individual
capacity,**

Defendants.

Civil Action No. CIV-23-1002-F

DEFENDANTS' NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§1331, 1441, and 1446, Defendant Ryan Walters, in his individual capacity, with the consent of Defendants State of Oklahoma ex rel. Oklahoma State Department of Education and Ryan Walters, in his official capacity as Superintendent of Public Instruction, (collectively, “Defendants”) remove Cause No. CJ-2023-5054 (the “State Court Action”) from the District Court of Oklahoma County, State of Oklahoma, to the United States District Court for the Western District of Oklahoma, and would respectfully show the Court as follows:

I. SUMMARY OF STATE COURT ACTION

1. Plaintiff Janessa Bointy (“Plaintiff” or “Bointy”) initiated the State Court Action by filing her Original Petition on September 1, 2023 in the District Court of Oklahoma County, State of Oklahoma.

2. Plaintiff served Defendants State of Oklahoma ex rel. Oklahoma State Department of Education and Ryan Walters, in his official capacity as Superintendent of Public Instruction on September 12, 2023.

3. Plaintiff served Defendant Ryan Walters, in his individual capacity on October 5, 2023.

4. The removal of the State Court Action by Defendant Ryan Walters, in his individual capacity is timely under 28 U.S.C. § 1446(b), as Defendant Ryan Walters, in his individual capacity, is removing the State Court Action within 30 days of his being served with the Petition.

5. Defendants State of Oklahoma ex rel. Oklahoma State Department of Education and Ryan Walters, in his official capacity as Superintendent of Public Instruction filed a Motion to Dismiss on September 22, 2023. The Court heard and denied this Motion to Dismiss on November 2, 2023.

6. Defendant Ryan Walters, in his individual capacity, filed a Motion to Dismiss on October 26, 2023. No hearing has been set on this Motion to Dismiss.

7. Plaintiff's Petition asserts claims for wrongful and retaliatory termination of employment in violation of the First Amendment of the U.S. Constitution through 42 U.S. § 1983 and of Oklahoma's Constitution through the *Burk* tort doctrine.¹

8. Plaintiff, a former employee of the Oklahoma State Department of Education, asserts her claims arise out of statements she made during a school board meeting for Edmond Public Schools.²

II. JURISDICTION

9. The State Court Action is removable under 28 U.S.C. § 1441 on the basis of federal question jurisdiction. Any civil action brought in a state court may be removed without regard to the citizenship of the parties when the district courts of the United States have original jurisdiction.³ District courts of the United States have original jurisdiction over all civil actions arising under the Constitution and laws of the United States.⁴

10. Plaintiff's Petition specifically alleges a cause of action against Defendants seeking relief under the First Amendment of the U.S. Constitution by way of 42 U.S.C. § 1983.

11. Because Plaintiff has asserted claims under federal law, Plaintiff's claims arise out of the laws of the United States. Thus, this action is removable and the United States District Court for the Western District of Oklahoma has jurisdiction.

¹ See Petition, ¶3.

² See Petition, ¶¶5-10.

³ See 28 U.S.C. § 1441.

⁴ See 28 U.S.C. § 1331.

12. The United State District Court for the Western District of Oklahoma has supplemental jurisdiction over Plaintiff's state law claim under 28 U.S.C. § 1367 as Plaintiff's claim pursuant to the Oklahoma Constitution is part of the same case or controversy as Plaintiff's claim under the U.S. Constitution. However, even if supplemental jurisdiction over the claim pursuant to the Oklahoma Constitution does not exist, the entire State Court Action is still removable pursuant to 28 U.S.C. § 1441(c)(1)(B).

13. Accordingly, the entire State Court Action is removable.

III. COMPLIANCE WITH REMOVAL REQUIREMENTS

14. The State Court Action originally was filed in the District Court of Oklahoma County, State of Oklahoma, as Cause No. CJ-2023-5054, and in which Janessa Bointy is the Plaintiff, and the State of Oklahoma ex rel. Oklahoma State Department of Education and Ryan Walters, in his official capacity as Superintendent of Public Instruction, and in his individual capacity are Defendants.

15. In compliance with 28 U.S.C. § 1446(a), all papers, pleadings and indexes that have been filed or served upon Defendant in the State Court Action are attached hereto (see documents following Exhibit 3). Additionally, in compliance with Local Rule 81.2(a), a copy of the state court docket sheet is attached hereto (as Exhibit 3).

16. Defendant will serve a copy of this Notice of Removal on Plaintiff's counsel and will file a copy with the District Court of Oklahoma County, State of Oklahoma, as required by 28 U.S.C. § 1446(d). A copy of the Notice of Removal filed with the District Court of Oklahoma County and served upon Plaintiff's counsel will be filed with this Court, after the filing is completed.

17. If any question arises as to the propriety of the removal of this action, Defendant requests the opportunity to present brief argument in support of its position that this case is removable.

18. Defendants the State of Oklahoma ex rel. Oklahoma State Department of Education and Ryan Walters, in his official capacity as Superintendent of Public Instruction consent to the removal of the State Court Action and intend to separately file a written consent with this Court upon the filing of this Notice of Removal.

19. The following documents are being filed with this Court as exhibits to the Notice of Removal:

Exhibit 1	Docket Sheet for State Court Action with all process, pleadings, and orders served upon defendants (in following tabs)
Exhibit 2	Plaintiff's Original Petition
Exhibit 3	Entry of Appearance – Leah M. Roper for Plaintiff
Exhibit 4	Return of Service of Citation Served on Defendants State of Oklahoma ex rel. Oklahoma State Department of Education and Ryan Walters, in his official capacity as Superintendent of Public Instruction
Exhibit 5	Entry of Appearance – Bryan Cleveland for Defendants State of Oklahoma ex rel. Oklahoma State Department of Education and Ryan Walters, in his official capacity as Superintendent of Public Instruction
Exhibit 6	Defendants State of Oklahoma ex rel. Oklahoma State Department of Education and Ryan Walters, in his official capacity as Superintendent of Public Instruction Motion to Dismiss
Exhibit 7	Notice of Hearing
Exhibit 8	Response in Opposition to State of Oklahoma's Motion to Dismiss
Exhibit 9	Return of Service of Citation Served on Defendant Ryan Walters, in his individual capacity

Exhibit 10	Entry of Appearance – Julia Mann for Defendant Ryan Walters, in his individual capacity
Exhibit 11	Defendant Ryan Walters, in his individual capacity, Motion to Dismiss

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests that the State Court Action be removed to this Court for trial and determination, that all further proceedings in the State Court Action be stayed, and that Defendant have all additional relief to which he may be justly entitled.

Respectfully submitted,

/s/ Scott M. McElhaney

Timothy Davis

Texas State Bar No. 24086142

(application to appear pro hac vice forthcoming)

Alexandra M. Williams

Texas State Bar No. 24107297

(application to appear pro hac vice forthcoming)

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**COUNSEL FOR DEFENDANT RYAN
WALTERS, in his Individual Capacity**

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2023, I electronically transmitted the attached document to the Clerk of Court using the Electronic Case Filing System for filing.

I hereby further certify that on November 6, 2023, the following counsel of record in the state court were served with this filing by first class mail and e-mail.

Leah M. Roper
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/s/ Scott M. McElhaney